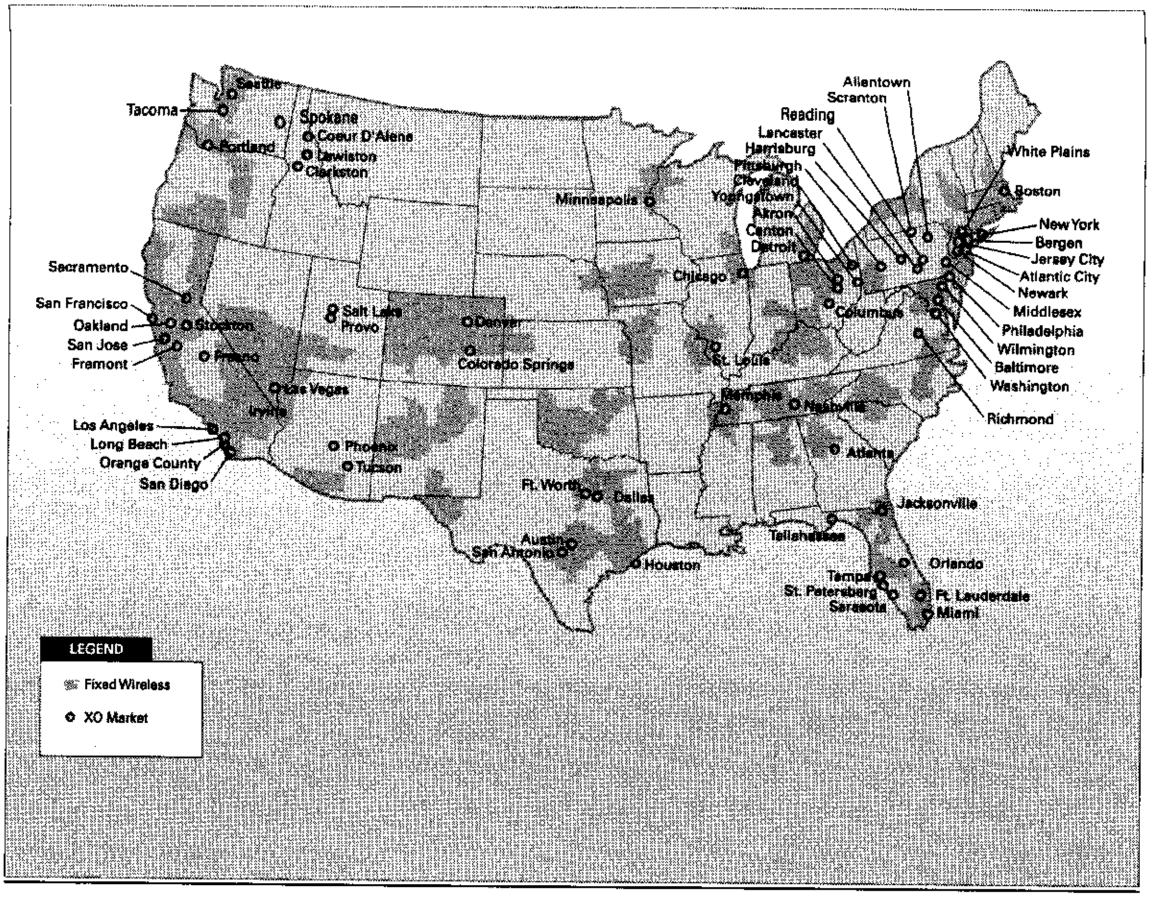
direct broadband dedicated access services that bypass ILEC networks using Local-to-Multipoint Distribution System (LDMS) technology and XO's nationwide fiber network. XO markets these services to CLECs, IXCs, ILEC, ISPs, resellers, Wireless Internet Service Providers (WISPs), and VoIP providers. Following the successful completion of a 2004 trial in Southern California, XO plans to roll out a nationwide retail offering to businesses. As the map below shows, XO's fixed wireless broadband network is currently deployed in many SBC coverage areas, including the San Francisco Bay Area, Los Angeles, Orange County, Long Beach, San Diego, Sacramento, Stockton, Fresno, Dallas-Ft Worth, San Antonio, Austin, Houston, St. Louis, Chicago, Detroit, Columbus, Cleveland, Canton, Akron and Youngstown.[37/]

37/ XO Fixed Wireless Assets Map, *available at* http://www.xo.com/about/network/maps/wireless_normal.html.

Figure 5

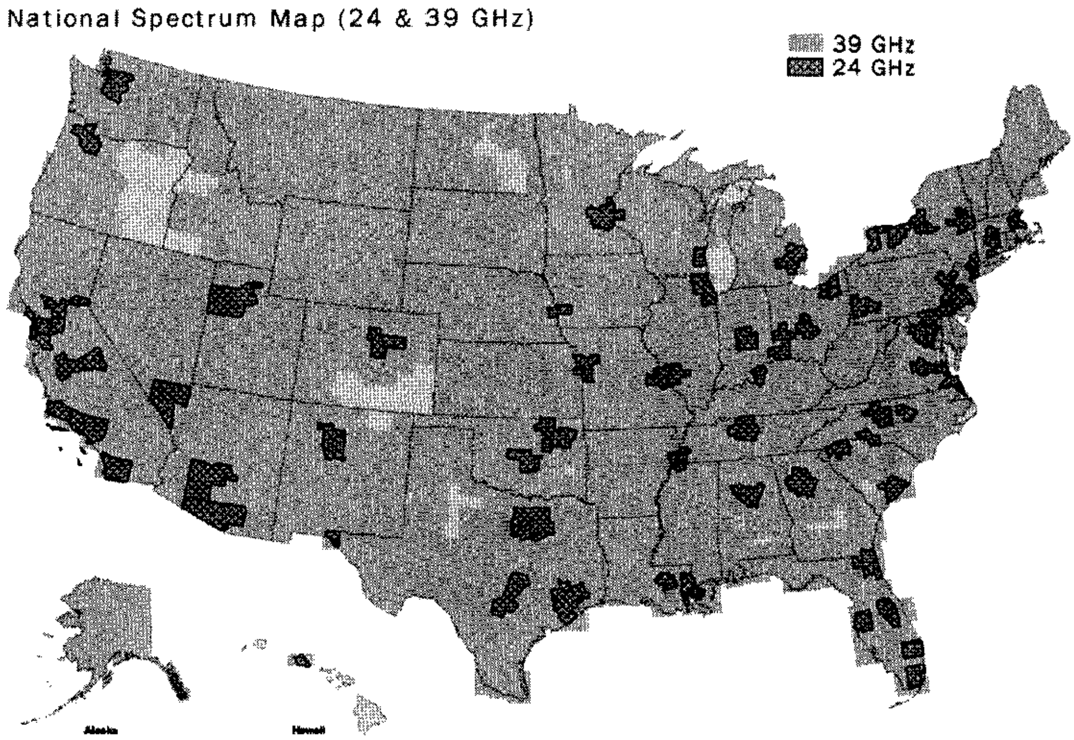


48. First Avenue Networks, mentioned above as a "mobile carrier's carrier," offers mobile backhaul and other high-capacity services at speeds ranging from T-1 (1.5 Mbps) to OC12 (622 Mbps) to mobile carriers, IXCs, CLECs, WISPs, and government agencies. It owns fixed wireless broadband licenses that cover virtually all of the major metropolitan areas in the United States.[38] First Avenue currently operates mobile backhaul networks in several large metropolitan

[38] Advisory, Insight and Market Strategy Service Report, 5 Wireless Internet Services and Networks 1, at 6 (Apr. 2004).

areas, including New York City and several southwestern U.S. locations, and has deployed facilities in all of the 150 top MSAs. The map below depicts First Avenue's extensive service area.

Figure 6



49. NextWeb is California's largest Wireless Internet Service Provider (WISP) for business, providing high-speed services—including DS1 and higher services—to more than 2,000 enterprise customers. Its service area encompasses over 175 cities across nearly 3,000 square miles,[39/] making its service available to over 200,000 business locations[40/] in population centers that

39/ NextWeb Markets Served, *available at* http://www.nextweb.net/aboutus-background.

40/ NextWeb Buildes Largest Broadband Wireless Network in Los Angeles Area, *available at* http://www.nextweb.net/documents/NextWeb-LA-Final.pdf.

include nearly 25 million households throughout California.[41/] In May 2005, NextWeb announced that it will provide fixed wireless service in Las Vegas. NextWeb aims to expand quickly into other major cities using the same formula. NextWeb also offers its service on a wholesale basis to other providers, and is engaged in trials of VoIP services.

50. TowerStream currently offers wireless broadband services on unlicensed spectrum at speeds ranging from 1.5 to 5 Mbps for small businesses, 10 to 45 Mbps for medium-sized businesses, and up to 1000 Mbps for enterprise customers in several major metropolitan areas, including New York City, Boston, Providence, Newport (RI), Chicago, and Los Angeles, with plans to expand into other markets.[42/] TowerStream has signed up over 700 customers, from large enterprise customers (including Fortune 500 companies, cities, hospitals and universities) to small businesses (such as a small law office).[43/] TowerStream is aggressively marketing its service as a substitute for traditional wireline special access services (such as DS1 and DS3 services) with rigorous service quality guarantees, but at a fraction of the cost of such wireline services. TowerStream also promises to deliver its services within days or hours, rather than the weeks required to deploy wireline special access services.[44/]

51. TowerStream's Chicago network, which covers the entire downtown area, is displayed in the map below.

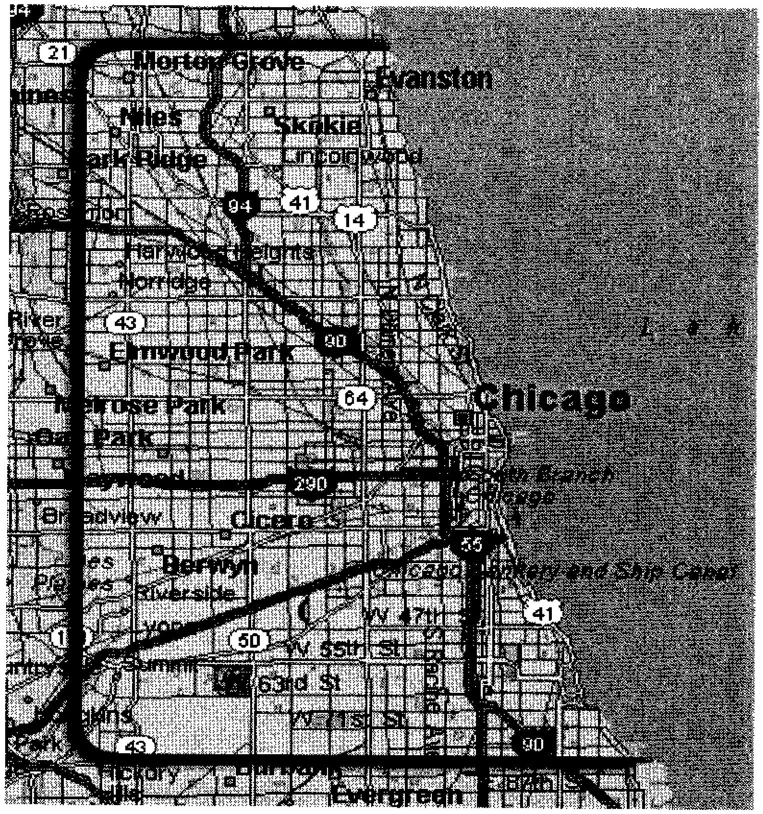
41/ *Id.*

42/ TowerStream Launches First Point-of-Presence on Top of Aon Center in Los Angeles (Nov. 12, 2004), *available at* www.towerstream.com/content.asp?pc:26.

43/ TowerStream Enterprise, *available at* http://www.towerstream.com/content.asp?enterprise.

44/ Intel Case Study on TowerStream and WiMax, *available at* http://www.towerstream.com/content.asp?pc:23.

Figure 7



52. In November 2004, TowerStream launched its point of presence in Los Angeles on top of the Aon Center with the following serving area:

Figure 8

53. SBC's special access customers certainly have recognized the potential of these fixed wireless alternatives, and therefore have begun to demand technology upgrade clauses in their service contracts. These clauses give customers the option to abrogate their contracts to switch to alternative technologies in certain circumstances, in return for paying additional consideration to SBC for assuming the risk of early termination. By voting with their pocketbooks, these customers have demonstrated their confidence that alternative technologies are a real substitute for traditional special access services. Examples of these clauses can be found in three contract tariffs SBC recently filed with the FCC.[45/]

45/ **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]

V. SBC'S REACTIONS TO COMPETITIVE PRESSURES

A. SBC Has Lowered Its Special Access Rates In Response to Competition

54. In response to these competitive pressures, SBC has continued to lower its prices for special access services, and to develop new and innovative pricing plans, including individually negotiated contract tariffs, to meet its customers' needs. Many of these plans provide significant discounts in exchange for purchase commitments. Like publicly traded companies in virtually every industry, SBC must make revenue projections and set revenue targets for each of its business units every year to continue to attract investors and the capital investment necessary to maintain and upgrade its network to provide state-of-the-art products and services. Consequently, as SBC confronts increasing competition for special access services, SBC places a premium on the revenue certainty that these purchase, or revenue, commitments provide, and is willing to offer substantial discounts to obtain them.

55. As shown above, SBC confronts increasing special access competition throughout its service territory. But, to better assess the impact of competition in those areas where it has received pricing flexibility, SBC retained an independent consultant to examine 37 MSAs in which SBC has received some level of price flexibility relief (and which account for approximately **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** percent of SBC's Phase II revenue demand) to evaluate competitive developments between 2000 and 2004. That study clearly shows that the number of competitors remained stable or grew in each of the MSAs analyzed.[46/] It further shows that, as competition increased, average prices offered by alternative service providers for DS1 and DS3 services in those markets fell significantly.

[46/] See Table 1, *supra*.

56. An internal analysis of the price per unit SBC offered its customers in MSAs in which SBC was granted Phase II pricing flexibility demonstrates that the prices customers actually paid SBC for DS1 and DS3 services continued to fall steadily over the same period. In particular, between 2000 and 2004, the average prices that customers paid SBC in Phase II MSAs dropped by approximately **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** percent for DS1 channel terminations and associated transport, and approximately **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** percent for DS3 channel terminations and associated transport,[47] as shown below:

[BEGIN CONFIDENTIAL INFORMATION]

47/ In calculating the average price for DS1s and DS3s, SBC aggregated data from all MSAs in which SBC received Phase II pricing flexibility, including those in which it received relief for both end user channel terminations and POP side transport as well as those in which it received relief for POP side transport only. For those areas in which SBC did not receive Phase II relief for end user channel terminations, SBC normalized the demand and price trends to remove the effects of any price reductions due to price cap productivity adjustments for channel terminations. In addition, in calculating these average prices, SBC took into account revenues received from customers' purchasing pursuant to SBC's basic schedule, term plans, contract pricing plans, and overlay discount plans (such as MVP).

Figure 9

Figure 10

[END CONFIDENTIAL INFORMATION]

This downward trend in DS1 and DS3 prices was driven entirely by SBC's response to customers' purchasing decisions, not reductions mandated by regulation.

57. At first blush, these price reductions may not appear to be as great as those of SBC's competitors. But the average price per channel termination shown above takes into account services purchased pursuant to SBC's basic, month-to-month rates, as well as services purchased pursuant to long-term pricing plans entered several years previously, and thus do not represent the

rates SBC would offer today under pricirg plans and contract tariffs comparable to those offered by SBC's competitors. Moreover, SBC offers its customers a premium service with many value-added features **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] in order to meet the customers' demands in a competitive market. Consequently, SBC often may charge its customers a premium price for its service.[48/]

58. It is not true, as some of SBC's carrier customers have alleged, that SBC generally has increased its special access rates where it has obtained Phase II pricing flexibility.[49/] And while some other ILECs may have raised their special access rates where they received Phase II relief, it appears that many of these increases were for basic schedule, month-to-month rates and were offset by reduced rates in volume and term plans. This type of combination of increases and decreases is no different from the increases in basic schedule rates, and reductions in rates under volume and

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48/ SBC's market research indicates that SBC's competitors generally offer service at prices **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** percent below those charged by SBC.

49/ While SBC's Phase II basic tariff rates are somewhat higher than those in price cap MSAs, this results largely from rate reductions in price cap MSAs due to X-factor reductions mandated by the Commission's rules, which do not apply to services subject to Phase II pricing flexibility. And, while SBC has unified pricing flexibility tariffs that apply to all MSAs in which it has obtained Phase II flexibility (which caused rates in MSAs in which SBC obtained Phase II flexibility after 2001 to increase back to the rates that applied before any reductions due to the X-factor in 2001-03), SBC has not increased rates in MSAs with Phase II pricing flexibility above those in effect when SBC first received pricing flexibility in 2001, except in certain narrow instances. And even in those narrow instances, the increases are small, represent a small number of services and are a small amount of SBC's special access business. Even for those services, moreover, SBC's average price to the customer has declined when contract discounts are considered.

term plans, introduced by wireless and long distance carriers. It thus reflects a growing trend in the telecommunications industry towards discounts for higher volume users or those willing to make long-term commitments.

59. To meet its customers' individual needs, SBC offers a variety of discount plans, including its Managed Value Plan (MVP) and customized contract tariffs, which provide customers many options from which to choose **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]. For example, SBC offers very attractive term discounts under its new Term Payment Plan (TPP). Under this discount plan, a customer who selects a one-year term under the TPP would receive an eleven percent discount off of the month-to-month rate. If the customer chooses a three or five year plan, it will receive an additional 41 percent or 45 percent discount respectively.

60. SBC's MVP, which was developed in collaboration with many of SBC's largest wholesale customers, offers additional discounts (in the form of credits) of nine to fourteen percent off of SBC's basic schedule special access rates over a five-year term. The MVP requires a minimum annual revenue commitment ("MARC") of 100 percent of the customer's purchases during the three months prior to entering MVP, annualized. However, SBC's carrier customers do not necessarily have to commit all of their special access spend with SBC to the MVP plan. The majority of these customers purchase services through one or more subsidiaries (for example, MCI may purchase service through UUNET, Brooks Fiber, MFS, MCI Metro, WorldCom, or other subsidiaries). Under MVP a customer may decide which of its subsidiaries' purchases to include for purposes of calculating the MARC, and may allocate future purchases among its subsidiaries to ensure that they meet the MARC. Carriers may also purchase services from other carriers who are

special access wholesalers and/or may choose to build facilities to meet their special access demands and the demands of their customers. The MARC may be increased during the term of the MVP, but it may not be decreased. In addition, the MVP requires that customers purchase 95 percent of the access-like services they acquire from SBC out of SBC's interstate access tariffs. The discounts received by customers under the MVP are overlay discounts, meaning they are in addition to discounts received under certain of SBC's other discount plans.

61. By including the MARC component in the MVP, SBC intends to satisfy the following business objectives, among others. First, the MARC provides SBC with revenue stability, which helps keep its cost of capital low and, as noted, is a benefit SBC is willing to pay for through higher discounts. Revenue stability allows SBC to make the substantial sunk investments necessary to build, maintain, and upgrade its networks to meet expected demand with greater assurance that those investments will not be stranded if demand shifts unexpectedly.

62. Second, the MARC allows SBC to compete for the business of smaller customers on a level playing field with its unregulated wholesaler rivals. By their nature, pure wholesale volume discounts favor larger customers that have qualifying levels of demand, and generally mean that smaller carriers receive smaller discounts (or no discounts at all). However, by basing each customer's volume commitment on the customer's prior demand, the MARC allows SBC to compete for smaller customers by giving them higher discounts than they would receive through pure volume discounts—without incurring the risk that the larger customers will cease to commit to their commensurately higher volumes. Were the Commission to issue a rule allowing price-cap LECs to offer only pure volume discounts, it would severely impair SBC's ability to attract and retain the business of smaller customers, because smaller customers would be unable to qualify for high (or even substantial) volume discounts. Indeed, without the MARC, SBC might decide not to

offer MVP-type discounts at all, especially in light of the fact that the MVP supplements other discounts offered by SBC.

63. In addition to the MVP, SBC offers very aggressive discounts of up to **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent off of basic schedule rates under individually negotiated contract tariffs. These discounts, as well as MVP, are outlined in Tables 8 and 9 below.

Table 8

DS1 Discounts Available	Percentages
1 Year	11% off of month-to-month rate
3 Year	41% off of month-to-month rate
5 Year	45% off of month-to-month rate
MVP	9 - 14% overlay discount
Price Flex Contract Tariffs	**[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** off of tariff rates

Table 9

DS3 Discounts Available	Percentages
1 Year	NA
3 Year	31% off of 1 year rate
5 Year	42% off of 1 year rate
MVP	9 - 14% overlay discount
Price Flex Contract Tariffs	**[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** off of tariff rates

B. SBC Has Restructured Its Sales and Marketing Organizations to Offer More Customer-Specific Terms and Pricing, Where Allowed

64. Over the past several years, as competition for special access services has increased, SBC increasingly has relied on its Phase I contract tariff authority to meet its customers' demands for individually tailored service arrangements that meet their specific needs, just as the Commission

intended in the *Pricing Flexibility Order* To that end, SBC has assembled a dedicated team of **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** to assist carrier customers in the market by negotiating pricing flexibility contract tariffs with its customers. SBC also has restructured its operations teams, dedicating **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** to support and implement the pricing flexibility contract ordering and provisioning process. In addition, SBC has committed almost **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** to develop billing system enhancements necessary to provide unique pricing, terms and conditions pursuant to such contracts.

65. To date, SBC has developed and proposed approximately 283 price flex contracts tailored to meet the needs of specific customers, including IXCs, wireless providers, CLECs, and large retail customers. In fact, more than **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** percent of these contract tariffs have been developed over the past **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** as SBC has faced an increasingly competitive marketplace driven by aggressive offerings from traditional and intermodal competitors. These contract tariffs are offered on an SBC-wide, region-wide, multiple MSA, or single MSA basis. They offer significant discounts of **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** percent off SBC's basic schedule for special access services ranging from DS1s to OC192s. SBC has approximately **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** price flex contracts in place

today or pending final customer acceptance, and an additional **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** price flex contract offers in various stages of negotiation. While the terms, conditions and prices in each of these contracts vary, the result always is the same: lower prices for customers. Some of these contracts are described in Table 10.

Table 10

AIT Contract Number 47SW **Contract Number 35PB** **Contract Number 41SNET** **Contract Number 1** Contract Effective **Terms and Conditions:** ▪ Current Annual Revenue Commitment (CARC) ▪ 13 state agreement ▪ 2.9year term ▪ Approximately **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** effective discount off new and embedded base special access recurring revenue across 12 states This is in addition to any underlying term plan discounts	**AIT Contract Number 43** **SW Contract Number 31** **PB Contract Number 34** **SNET Contract Number 6** Contract Effective **Terms and Conditions:** ▪ Minimum Annual Revenue Commitment (MARC) ▪ 13 state agreement ▪ 5 year term ▪ One time MARC reduction option of 10% or 20%during contract term ▪ MARC Discount of **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** on recurring revenue ▪ Above MARC discount of **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** on recurring revenue ▪ Installation non-recurring charges waived ▪ Portability/Avoidance of TL – **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** This is in addition to any underlying term plan discounts.

<table>
<tr>
<td>

<u>**AIT Contract Number 64**</u>
<u>**SW Contract Number 48**</u>
<u>**PB Contract Number 56**</u>
<u>**SNET Contract Number 16**</u>

Contract Under Negotiation

Terms and Conditions:

- Minimum Annual revenue commitment with upward adjustment annually if applicable
- 13 state agreement
- 5 year term
- Commitment calculated based on 5 year term regardless of actual
- One time MARC reduction option of 10% after first 24 months
- MARC Discounts of **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]**
- Above MARC discount of **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]**
- Installation non-recurring charges waived
- Portability/Avoidance of TL

This is in addition to any underlying term plan discounts.

</td>
<td>

<u>**AIT Contract Number 28**</u>
<u>**SW Contract Number 22**</u>
<u>**PB Contract Number 33**</u>

Contract Effective

Terms and Conditions

- Baseline MARC with upward adjustment annually if applicable
- 11 state agreement
- 7 year term
- Up to **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** discount, depending on achievement of MARC; additional discounts available on OCn services
- Portability of services
- Customized SLAs

This is in addition to any underlying term plan discounts

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<u>**Contract Number TBD**</u>

Contract Under Negotiation

Terms and Conditions:

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

This is in addition to any underlying term plan discounts

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<u>**Other example contract offers:**</u>

Contracts Effective

AIT Region MSAs

- OCN, DS3, DS1
- 5 year term
- **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** discount

PB Region MSAs

- 1 - OC192, 4 - OC48
- 10 Year Term
- **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** discount

Chicago MSA

- OC48, DS3, DS1
- 5 Year Term
- **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** discount

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66. The other **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** contract tariffs proposed by SBC ultimately were not pursued by the prospective customer, despite the availability of significant discounts, for any number of reasons—including the possibility that these customers elected to go with alternative providers or to self-provision services via their own networks. The following few examples of bids that SBC lost demonstrate the widespread competitive activity in SBC's territory:

- SBC offered a customer a discount greater than **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** applied against its current business with SBC, but the customer opted to self-deploy and utilize competitive carriers.

- SBC developed a price flex contract tariff that offered discounted rates for OCn services in LA under a three or five year term, but lost the business to a competitive provider who offered **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent below SBC's rates.

- SBC proposed price flex contract tariff to a customer for 316 DS3s throughout SBC's thirteen-state territory; but lost the bid to another provider at an approximately **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent discount.

- SBC offered **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent off 60-month rates for DS3 for a customer in Topeka, Kansas, but the customer went with another provider.

- SBC proposed to provide a customer 1,600 DS1s and 57 DS3s in Dallas, Houston, San Antonio, and Austin at approximately **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent off 60-month rates. SBC lost the bid to another provider.

- SBC bid on 350-plus DS1 services for a customer in Tulsa, Oklahoma, but lost the deal to a competitive provider.

- SBC offered a customer DS1 service in Bartelsville, Oklahoma, but lost the deal to another provider, which proposed a lower rate and offered the customer a fiber local loop.

- In Dayton, Ohio, a customer requested that SBC provide an immediate **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL**

INFORMATION] percent discount on its embedded base. SBC offered **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent over the contract life but lost the bid to an alternative provider.

67. In addition, in the following instances, SBC was forced to negotiate heavily discounted services in order to retain current business or win new business:

- Carlsbad, California. SBC offered a **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent net discount on OCn and DS3 services through a combination of lower rates and tariff optimization in order to retain business.
- Tulsa, Oklahoma. SBC offered a **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent discount on a customer's embedded base in order to retain its business.
- Little Rock, Arkansas. SBC offered **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent off of two OC48 Rings in order to retain business.
- Peoria, Illinois. SBC offered **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent off a customer's embedded base in order to retain its business.
- Cleveland/Columbus, Ohio SBC offered a **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent discount on DS3 interoffice service in order to retain business.

68. In addition, many of SBC's customers have leveraged their ability to switch to alternative providers in wire centers with the most competitors to obtain higher discounts throughout an MSA. **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]**, for example, negotiated a price flex contract in the **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** market that provides a **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent discount throughout the MSA regardless of the competitiveness of the specific wire center. Thus, claims that ILECs can use their purported

market power in wire centers with fewer competitive alternatives to increase rates in wire centers with more alternatives have it exactly backwards.

69. SBC has willingly adjusted the terms of its volume and term plans to satisfy its customers. For example, on June 1, 2005, SBC announced an agreement with Time Warner under which the customer's payments for **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** would count toward its minimum annual volume commitment.[50/] This is another example of how SBC is striving to meet the competitive demands of the special access market.

70. Many of SBC's customers have expressed a strong preference for these individually negotiated contract tariffs for special access services. Indeed, the one complaint they have lodged about pricing flexibility contracts is SBC's inability to offer contract tariff rates, terms and conditions in markets in which SBC has not yet received Phase I pricing flexibility. This lack of contract tariff authority seriously limits SBC's ability to offer competitive pricing and certain value added services, **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]**, across our customers' entire base. This, in turn, complicates these customer's marketing plans, and makes it difficult for them to manage their businesses, since the rates they pay, and the terms on which they purchase service, vary. Additionally, by requiring SBC to offer service pursuant to different contractual and tariff terms,

50/ *See* Press Release, Time Warner Telecom, AT&T, SBC Extend Long-Term Service Agreement (June 1, 2005), *available at* http://home.businesswire.com/portal/site/moreover/index.jsp?epi-content=GENERIC&newsId=20050601006145&&newsLang=en&beanID=1868105982&viewID=news_view.

this lack of flexibility requires SBC to expend significantly greater time and resources to manage its customers' accounts.

71. These problems would only be exacerbated if the Commission were to narrow ILECs' contract tariff authority by granting pricing flexibility on a basis more granular than the MSA. I cannot even imagine how difficult it would be for SBC and its customers, both of which prefer region-wide pricing, to "contract around" a regulatory structure parsed by the wire center or individual route. Carrier customers are requesting SBC to offer contracts on an enterprise wide basis. The retail customers that they serve are not limited by MSA. Therefore, carrier customers want and are demanding that SBC offer pricing proposals across larger geographic areas than an MSA. Such a narrowing of contract tariff authority likely would force SBC to abandon contract tariffs, which inevitably would cost SBC significant lost business and severely limit our customers' options, because the process would become virtually unmanageable for all parties involved.

72. Many of SBC's wholesale customers also have expressed a preference for pricing arrangements that provide them with discounts on their aggregate demand for a variety of special access services in return for a volume or revenue commitment. Under these arrangements, SBC's customers agree to a volume or revenue commitment that is less than or equal to their current in-service volumes; in no case are they required to "grow" their volumes with SBC. These arrangements benefit wholesale customers by providing them the flexibility to handle customer and network churn by replacing low speed services with higher speed services and adding and deleting circuits in response to their own retail customers' demand, while still providing the wholesale customers significant discounts. These arrangements also benefit SBC by providing it the revenue certainty it needs to set and meet its revenue goals, and thus attract investors and capital necessary to maintain and upgrade its network.

73. Many other carriers, like many service providers in other industries, offer similar arrangements, with discounts that depend on a customer's volume or revenue commitment. **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** and **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** alone have offered **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** contracts that require their customers to make some form of revenue commitment.[51] Some examples include:

[BEGIN CONFIDENTIAL INFORMATION]

•

[END CONFIDENTIAL INFORMATION]

74. *Finally, I would like to address two conditions in some of SBC's volume plans that* some parties have claimed are anticompetitive in various proceedings. These are the access service ratio provision and the so-called "win-back" provision. The access service ratio provision does *not* require customers to purchase a specific percentage of their high-capacity circuits from SBC, as some have claimed. Rather, that provision simply requires a carrier customer to purchase a specific percentage of the high-capacity circuits that it buys from SBC as special access services, rather than as unbundled network elements. In each case, the customer remains free to buy new high-capacity circuits from alternative providers or to self-provide them with no penalty or loss of discount. SBC developed this tariff provision to provide it with the financial certainty it needs to offer new and

51/ Numbers derived from Tariffnet.com, a telecom industry website. *See* Tariff Search, *at* http://www.tariffnet.com/asp/toolframe.asp.

innovative special access products, aggressive volume discounts and progressive service level agreements, while maintaining a highly reliable special access network.

75. SBC's win-back incentives also do not *prevent* customers from turning to alternative providers or from self-providing high-capacity services. The term "win-back" actually is a bit of a misnomer because a customer need not have originally purchased service from SBC, switched to another carrier, and then returned to SBC to qualify for the discount. Rather, a customer can qualify for the discount if it brings business that it has purchased from another carrier to SBC. This incentive thus offers customers discounts to meet competition from other carriers, similar to win-back programs in other industries and those routinely offered by long-distance and wireless carriers, which encourage customers to switch carriers by offering them discounted service for several months or simply a check. Telecommunications carriers and companies in other industries have long used these types of programs to aggressively compete with each other to win business, and thus such programs reflect the very essence of competition.

VI. CONCLUSION

76. As the foregoing demonstrates, the special access market is robustly competitive, and increasingly so. Competing providers of wireline special access services already provide the lion's share of OCn services, and continue to sign up customers purchasing DS1 and DS3 services every day. In addition, intermodal competitors, including cable operators and fixed wireless providers, are making ever-greater in-roads. In response, SBC has aggressively reduced its prices for special access services, offering a variety of volume and term plans as well as individually negotiated contract tariffs to meet the specific needs of its customers. Thus, far from being the failure that some have claimed, the Commission's pricing flexibility policies have been a

resounding success. Accordingly, the Commission should not turn its back on these policies, as some have proposed. If it does, consumers, and the economy as a whole, will be the losers.

77. This concludes my Declaration.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 13, 2005.

Parley Casto

REDACTED - FOR PUBLIC INSPECTION

Special Access Competition in the El Paso TX MSA

REDACTED - FOR PUBLIC INSPECTION

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2

Weighted Averages Across 30 MSAs for DS1s		
Sum of DS1 Counts ≤ 1,000 Feet of Known Alternative Fiber	Total Demand Count ≤ 1,000 Feet of Known Alternative Fiber	Weighted Average Percentage

Weighted Averages Across 30 MSAs for DS3s		
Sum of DS3 Counts ≤ 1,000 Feet of Known Alternative Fiber	Total Demand Count ≤ 1,000 Feet of Known Alternative Fiber	Weighted Average Percentage

Austin, TX

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1,000 feet		
> 1,000 feet		

Bridgeport-Stamford-Norwalk-Danbury, CT

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1,000 feet		
> 1,000 feet		

Chicago, IL

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1,000 feet		
> 1,000 feet		

Cleveland, OH

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1,000 feet		
> 1,000 feet		

Columbus, OH

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1,000 feet		
> 1,000 feet		

Dallas-Ft. Worth, TX

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1,000 feet		
> 1,000 feet		

Detroit-Warren-Livonia, MI

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1,000 feet		
> 1,000 feet		

El Paso, TX

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1000 feet		
> 1000 feet		

Hartford-New Britain-Bristol, CT

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1000 feet		
> 1000 feet		

Houston, TX

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1,000 feet		
> 1,000 feet		

Indianapolis, IN

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1000 feet		
> 1000 feet		

Kansas City, MO-KS

Distance from Known Alternative Fiber	% DS1s Within Distance	% DS3s Within Distance
≤ 500 feet		
≤ 1,000 feet		
> 1,000 feet		